THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.1536 OF 2005

Dated: 14-02-2006.

Between:

Peram Srinivasula Reddy … Petitioner

And

1. The Joint Collector, Nellore, Nellore District.

and others. … Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.1536 OF 2005

-

ORDER :

The writ petitioner is a contractor who was entrusted with the execution of the work o f formation of road from Vellanti Bus-shelter to hospital under Food for Work Programme. It is stated that 250 quintals of rice was allotted for distribution to the workmen and as per the Food for Work Scheme the Junior Engineer, Panchayat Raj had to issue coupons for 10 Kgs of rice per day to the workers and on production of such coupons the fair price shop dealer had to give the rice to the workmen after making necessary entries. It is further stated that since the concerned fair price shop dealer had allegedly, in collusion with the Sarpanch of the village, had sold major portion of rice allotted under the Food for Work Programme in the open market, and since similar such instances at various other mandals had come to light, the District Collector suspended the execution of all the works including the work entrusted to the petitioner. Subsequently, the 1st respondent - Joint Collector, on the basis of a report submitted by the Mandal Revenue Officer, Nellore reporting deficiency of 298 quintals of rice in the fair price shop of Kothavellanti village, having initiated proceedings under Section 6-A of the Essential Commodities Act, 1955 (for short, 'the E.C. Act') issued notice to the petitioner. Accordingly, the petitioner apart from submitting his explanation, appeared before the Joint Collector and denied the allegation that he obtained the rice from the fair price shop dealer without submitting the coupons.

Thereafter, the petitioner was served with the impugned notice dated 15-1-2005 issued by the Mandal Revenue Officer, Nellore directing the petitioner to pay a sum of Rs.1,94,226/- within one week failing which criminal proceedings will be initiated. In the said notice, it is stated that as per the orders of the Joint Collector dated 6-10-2004, it was established that the petitioner had diverted and misappropriated 32.37 tons of Food for Work Rice and therefore the value of the said rice was directed to be recovered from the fair price shop dealer and the petitioner jointly. The petitioner states that he was never served with the order dated 6-10-2004 said to have been passed by the Joint Collector and that only on receipt of the impugned notice date 15.1.2005 he obtained a copy of the order dated 6.10.2004 from the office of the Mandal Revenue Officer. Hence, this writ petition seeking a writ of Mandamus declaring that the order of the Joint Collector dated 6.10.2004 passed under Section 6-A of the E.C. Act as well as the consequential notice dated 15.1.2005 issued by the Mandal Revenue Officer are arbitrary, illegal and without jurisdiction.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader for Civil Supplies appearing for the respondents, and perused the material on record.

The learned Counsel for the petitioner contends that since the writ petitioner is not a fair price shop dealer, but only a contractor who was entrusted with the work of formation of road under Food for Work Programme, even assuming that there was any deficiency of rice available in the fair price shop, the petitioner is not amenable to any action under Section 6-A of the E.C. Act and therefore the 1st respondent – Joint Collector has no jurisdiction to fix the liability against the petitioner.

On the other hand, the learned Government Pleader contended that for execution of works under Food for Work Programme under S.G.R.Y. Scheme both the fair price shop dealer and the contractor are equally responsible till the rice released by the Government reaches the workmen engaged by the contractor. Hence, the 1st respondent had rightly fixed the responsibility for deficiency found in the Food for Work rice on the dealer as well as the petitioner. Since the said order was passed by the 1st respondent after hearing the petitioner, the same was in accordance with law and does not warrant any interference.

At the outset, it is to be noted that though the show-cause notice dated 1-9-2003 issued by the 1st respondent – Joint Collector purportedly in the proceedings initiated under Section 6-A of the Essential Commodities Act was served on the petitioner, virtually it was a notice directing the fair price shop dealer to show-cause as to why disciplinary action should not be initiated for mismanagement of the Food for Work stocks. The four charges framed and the operative portion of the notice may be extracted hereunder :

> *"Charge 1:- The respondent kept the stocks relating to Food For Work (FFW) in un-authorised places without obtaining permission from the competent authority and failed to maintain accounts.*
>
> *Charge 2 :- the respondent handed over FFW rice stocks to the*

contractor without coupons for her personal gains and failed to maintain the accounts related to the transactions.

Charge 3 :- The respondent has not maintained the true and correct accounts of the transaction undertaken in respect of distribution of FFW rice, PDS rice etc., to the concerned.

Charge 4 :- The respondent is collecting higher pries than rates fixed by the Government.

The respondent is hereby informed that the case is posted for hearing on 12-09-2003 at 3.00 pm. She is directed to appear before the Joint Collector, Nellore, either personally or through his counsel and to show cause why disciplinary action cannot be initiated for mismanagement of FFW stocks. If she failed to avail the opportunity given for her, it will be construed that she has no explanation to offer and final orders will be passed basing on the material available on record."

It is true that in the notice there was a reference to the statement of the fair price shop dealer alleging that the petitioner who was a contractor had taken delivery of 170 quintals of rice on assurance of giving coupons afterwards. Except the statement said to have been made by the fair price shop dealer, there was no other allegation against the writ petitioner nor any action was proposed against him much less he was called upon to explain any incriminating circumstances. However, the petitioner submitted an explanation denying the statement of the fair price shop dealer that 170 quintals of rice was given to him without giving coupons. In response to the notice dated 19-6-2004 the petitioner also participated in the enquiry and reiterated the same. However, the 1st respondent, while holding that the explanation was not convincing, ordered recovery of value of 32.371 MTs of rice from the dealer and the petitioner jointly.

At the outset, it is to be noted that admittedly in the show-cause notice dated 1-9-2003 the action proposed against the petitioner was neither indicated nor the petitioner was called upon to explain any particular allegation and there was no opportunity to the petitioner to raise his objections opposing the recovery of value of rice from him. Thus, undoubtedly the impugned order so far as the petitioner herein is concerned was arbitrary, illegal and in violation of the principles of natural justice and on that ground alone the same is liable to be set aside.

It is also relevant to note that Section 6-A of the E.C. Act confers power of confiscation of the Essential Commodities seized under the provisions of the Control Orders made under Section 3 of the E.C. Act. Even assuming that the rice meant for distribution to the workmen under Food for Work is governed by any of the control orders and thus the provisions of the E.C. Act are attracted, since admittedly the petitioner is neither a dealer nor a licensee under any control order, he cannot be made subject to the proceedings of confiscation under Section 6-A of the E.C. Act. As a matter of fact, the action of the 1st respondent in directing recovery of rice allegedly diverted to black-market, while exercising powers under Section 6-A of the E.C. Act itself appears to be illegal.

May be that, it is open to the respondents to proceed against the fair price shop dealer either by initiating disciplinary proceedings under the Provisions of the A.P. State Public Distribution System Control Order, 2001 or for recovery of the value of the commodities following due process of law. However, so far as the petitioner is concerned, the impugned order passed purportedly in exercise of Section 6-A of the E.C. Act is ex facie illegal and without jurisdiction apart from being violative of the fundamental principles of natural justice.

Accordingly, the Writ Petition is allowed and the impugned order dated 6.10.2004 as well as the consequential notice dated 15.1.2005 are set aside. However, this shall not preclude the respondents to initiate appropriate proceedings afresh against the petitioner in accordance with law after affording due opportunity to the petitioner. No costs.

_____

G. ROHINI, J.

DT.14–02-2006.

Gbs